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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/557,473	04/24/00	HAMLIN	R 10527-003007

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EXAMINER

DYE, R

ART UNIT	PAPER NUMBER
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1772

DATE MAILED:

08/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/557,473

Applicant(s)
Hamlin

Examiner
Rena L. Dye

Group Art Unit
1772



☒ Responsive to communication(s) filed on Apr 24, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 26-38 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 26-38 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 26-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zdrahala (5,248,305).

Zdrahala teaches an extruded catheter and other flexible plastic tubing manufactured from a liquid crystal polymer (LCP) (Figure 3; column 2, lines 13-28). The extruded LCP material may be coated, by coextrusion or subsequent extrusion, with a layer of typically non-liquid crystal polymer formulation which has tissue compatible characteristics. Also or alternatively, the coating may be on the inner surface of the tube of liquid crystal polymer material (column 2, lines 28-39). The coating may be a smooth, hemocompatible surface plastic material which may have lubricating characteristics. Coating materials are listed at column 4, lines 34-50 and are different materials than that of the LCP. Tubes extruded in accordance with this invention for catheters or any other use may be biaxially oriented in that they may be longitudinally stretched, simultaneously with the rotation of the extrusion die (column 4, lines 55-61).

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Although Zdrahala fails to expressly teach a balloon, it is the Examiner's position that a balloon configured to be attached to a catheter would be included in the teaching of "extruded catheters and *other flexible plastic tubing*". Therefore, it would have been obvious to one having ordinary skill in the art to have made a balloon catheter from the materials taught by Zdrahala.

Since Zdrahala teaches that which appears to be identical to the recited claims with respect to the material, the recited "wherein the balloon has a radial expansion not exceeding 3-10 percent when inflated to seven atmospheres" would be inherent.

Although Zdrahala does not expressly teach the second layer as an adhesion layer, Zdrahala does teach that the extruded catheter body may then have applied to it the customary parts, connections and the like used in the manufacture of conventional catheters of every type (column 4, lines 51-54). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the inner layer with a polymer having adhesive properties so that the catheter could be connected to other parts.

Double Patenting

3. Claims 26-38 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 5,270,086. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recited in the present patent application are broad enough to include or overlap with that which is recited in '086. The comprising language recited in independent claim 26 is broad

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enough to include the recited outer tensile layer and inner bonding layer of '086. Furthermore, '086 defines the outer tensile layer as including LCP (column 2, lines 31-42).

4. Claims 26-38 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26-50 of copending Application No. 087/907,170. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recited in the present patent application are broad enough to include or overlap with that which is recited in '170. The comprising language recited in independent claim 26 is broad enough to include the recited first layer of a biaxially oriented polymer (polyester) and a second layer or a biaxially oriented polymer (polyolefin).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Dye whose telephone number is (703) 308-4331.



Rena L. Dye
Primary Examiner
Tech Center 1700

R. Dye
August 27, 2000